

CRIMINAL APPEAL NO.1169 SB OF 2003

DATE OF DECISION: NOVEMBER 22, 2007

Balkar Singh

.....Appellant

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Ram Bilas Gupta, Advocate,
for the appellant.

Mr. Shailesh Gupta, DAG, Punjab,
for the State.

RANJIT SINGH J.

Appellant Balkar Singh is accused of raping Santosh Rani, a mentally retarded lady. The appellant could succeed in his adventure due to his proximity with the brother of the prosecutrix. He was statedly working with the brother of the prosecutrix as a helper cook/Halwai at marriage functions.

On 16.10.2002, the appellant went to the house of the prosecutrix and told her that her brother has rented a room in Bhai Randhir Singh Nagar and she was to accompany him to the room. After speaking to her brother, retarded lady, in all her innocence, accompanied the complainant. He took her to his room instead. There he forcibly undressed the prosecutrix by removing her salwar and committed sexual intercourse with her by putting her on a cot.

After committing the act, the appellant threatened the prosecutrix to kill if she disclosed this fact to any one. Saying so, he left her telling that he was going to sleep at Cremation Ground. On reaching her home, the prosecutrix narrated this incident to her brother, Surinder Mohan and his wife, Prem Rani. Her younger brother, Ravinder Mohan also reached the place and the incident was also brought to his notice. Surinder Mohan and Ravinder Mohan, both brothers of the prosecutrix, then went to look for the appellant and ultimately found him sleeping in the Cremation Ground. He was, thus, apprehended by police and charged with the offences under Sections 376, 366, 506 IPC. On the basis of evidence led by the prosecution, which mainly was that of the prosecutrix, her brothers and doctors, which conducted the medical examination, the appellant was sentenced to suffer RI for five years coupled with fine of Rs.500/- for an offence under Section 366 IPC. In addition, he was directed to undergo RI for 7 years and to pay a fine of Rs.700/- for his conviction for an offence under Section 376 IPC. He has filed this appeal.

This appeal was filed through jail and was admitted on 17.7.2003. When this appeal came up for hearing on 10.10.2007, it was found that the appellant was not represented by any counsel. To give him fair opportunity, Mr.Ram Bilas Gupta, Advocate, of this Court was requested to assist the Court as Amicus-curiae. He agreed to do so and accordingly the appeal is heard today.

Learned Amicus-curiae had a difficult task at hand in view of the over-whelming evidence on record but still he has made efforts to do his best. He ofcourse is to assist the Court. He says that there is no external or internal injuries on the body of the prosecutrix, which

could have positively proved the allegation of forcible sexual assault made by the appellant. Absence of any injury, according to him, is an indication of either no intercourse or atleast it being not against the will etc. The counsel perhaps forgot that lady is mentally retarded and this aspect would not be of much significance. Learned State counsel, on the other hand, has drawn my attention to the evidence to indicate that the case of prosecution is well supported by the evidence of the prosecutrix, which is duly corroborated by witnesses including the medical evidence.

I have gone through the evidence. The prosecutrix has given categorical version indicating the manner in which she was taken from her house to his room by the appellant. She has also given a graphic account of events in that room, making allegations of sexual intercourse. Her version would receive support from the medical evidence. The appellant was also subjected to medical examination. Number of injuries like defuse swelling on lips or other laceration like injuries were noticed on different parts of the body of the appellant. The examination of his genitalia revealed as under:-

“1. Penis and scrotal sac were well formed and there was no abnormality on gross appearance. On retraction of Irepuse, I observed that there was of peeling of skin about 1.5 cms x 1 cms. on dorsum of shift of penis over muco cutaneous junction. Frenulum was lacerated. No discharge was coming out of Urethra. Pubic hair were normal. Crematric was present on both sides.”

The medical examination of the appellant and that of the prosecutrix coupled with her version and that of the corroborating

evidence given by the brothers to whom the prosecutrix had revealed the incident in detail immediately, would lend enough assurance to the conviction recorded by the trial Court. The injuries noticed on the body of the appellant especially his sexual organ would be enough indication to silence the counsel from submitting that it was not a forcible sexual intercourse. Nothing substantial otherwise could be pointed out before me, which may call for any interference in the finding recorded by the trial Court. Even the swabs taken from the vagina, which were sent for examination, revealed presence of semen, which would be another indication in support of the allegations made by the prosecutrix. Accordingly no interference in the appeal is called for and the same deserves to be dismissed.

Mr.Gupta, Amicus-curiae would plead for leniency to the appellant in sentencing. He has drawn my attention to the fact that the appellant has undergone imprisonment for 5 years and 1 month by now. According to the counsel, the appellant has suffered enough. The counsel pleads that the sentence awarded to him may be reduced to the period already undergone. Rape is violent violation of a woman. It is an outrageous act by all norms and an unjustifiable conduct unacceptable in a civilized society. In present case, the appellant committed this act on a hapless victim, who is otherwise a victim of nature, being retarded. The gravity of crime here would aggravate. No legal or other justification is seen in this lust loaded criminality. The appellant appears to have already been dealt with some leniency. Sentence has to be such, which suits the offence and the offender and which may not make the offence look venial. Seen in this background, the sentence awarded already look less

efficacious. The appellant is alleged to have assaulted a mentally retarded lady on the false pretext by misleading her and then subjected her to sexual intercourse and as such, is required to be incarcerated for this term, which does appear excessive on any count. No leniency is, thus, called for. I would accordingly reject this prayer as well.

The appeal is accordingly dismissed.

November 22,2007

Khurmi

**(RANJIT SINGH)
JUDGE**